EASTERN WASHINGTON BANKRUPTCY NOTES

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12th Annual Bankruptcy Seminar and Retreat

The 12th Annual Bankruptcy Seminar and Retreat, sponsored by the Bankruptcy Bar Association for the Eastern District of Washington, will be held on June 7 and 8, 2002. As in the past, the location will be at beautiful Sun Mountain Lodge in Winthrop, Washington.

Some of the topics addressed will include relief from stay issues, Chapter 13 developments, first day orders, compliance with Rule 26, and a case law update. An hour of ethics credit will be offered. The distinguished panel of presenters includes the Honorable John M. Klobucher, the Honorable Frank L. Kurtz, the Honorable Wm. Fremming Nielsen, the Honorable Louis Phillips, the Honorable John A. Rossmeissl, the Honorable Patricia C. Williams, Beverly Benka, Frederick P. Corbit, Mary Ellen Gaffney-Brown, Mary Jo Heston, Dillon E. Jackson, Ted S. McGregor, Robert D. ("Jake") Miller, Jr., and Jan Ostrovsky.

The "Retreat" portion of this year's program will include a banquet, a bike ride, and a golf tournament, along with the renowned Hospitality Suite sponsored by the Hurley, Lara and Hehir law firm. For more information, contact Ian Ledlin at ian@plmgb.com or 509/838-6055.

Program Schedule
(As of 1/27/02)

June 7, '02
7:15 Registration & Continental Breakfast
7:55 William L. Hames Introduction
8:00 Wm. Fremming Nielsen Rule 26: Compliance & Sanctions
8:30 Louis Phillips Doctrines & Estoppels: How to Win Your Case Without Trying It
9:30 Break
9:45 Frederick P. Corbit: A Short History of Bankruptcy (Part IV)
10:00 Patricia C. Williams: Joint Administration of Cases: Problems & Perils
10:15 Jan Ostrovsky Ethics - Title TBA
11:15 Beverly Benka: Common Pitfalls & Hot Topics in Chapter 13 Cases
11:45 Adjournment
6:30 Children's Evening Program (2 hrs.)
6:30 No-Host Cocktails
7:30 Adult Banquet

June 8, '02
7:15 Continental Breakfast
7:55 Ian Ledlin Introduction
8:00 Louis Phillips: Automatic Stay Issues: Punitive Damages; Offers of Judgment; In rem Relief
8:30 Dillon E. Jackson: First Day Orders
9:30 Break
9:45 Frank L. Kurtz: Case law update
Mary Jo Heston, Mary Ellen Gaffney-Brown
10:45 Frank L. Kurtz: Judge/Clerk/Trustee/Attorney Meeting: Wm. Fremming Nielsen, Patricia C. Williams, John A. Rossmeissl, John M. Klobucher, T.S. McGregor, Robert D. Miller
11:45 Meeting of the Bankruptcy Bar Association
12:00 Adjournment

Inside...

Supreme Court Applies Doctrine of Equitable Tolling to Bankruptcy Cases

By Ian Ledlin

"And it came to pass . . . that all the world should be taxed." —St. Luke, 2:1.

We all know the law of taxes — if you owe them, you've got to pay them — unless you can discharge them in bankruptcy. In Bankruptcy 101, we learned that if the tax is over three years old, it loses its priority status and can be discharged.[1] The IRS has several weapons in its arsenal to avoid this result. One is to impress a tax lien, which is likely to occur if the taxpayer is not cooperating with the IRS agent in paying delinquent taxes. In its recent decision of *Young v. United States*, ___ U.S. _____ (2002), the Supreme Court shielded the IRS from a debtor's attempt to use a bankruptcy case to protect against the imposition of a tax lien while waiting for the those taxes to become mature enough to lose their nondischargeable status.

In *Young*, the debtors did not pay their 1992 income taxes, and filed a Chapter 13 case before the necessary three years had passed that would have allowed the taxes to be discharged. After remaining in their plan long enough for the "three-year lookback period" to elapse, the clever debtors moved to dismiss their Chapter 13 case, and filed a Chapter 7 case the day before the order of dismissal was entered. Thereafter, the debtors received a discharge in their no-asset Chapter 7 case.

Imagine the debtors' shock and surprise (and that of their lawyer) when the IRS demanded payment of their 1992 taxes. The IRS must have not accepted the debtors' claim that the taxes were discharged because the debtors reopened their Chapter 7 case and asked the judge to tell the IRS to leave them alone. The judge sided with the IRS, as did the District Court and the First Circuit Court of Appeals.

The Supreme Court acknowledged an apparent loophole caused by the three-year lookback period: More than three years could pass during the time the debtors are involved in a Chapter 13 case (while preventing the IRS from securing a tax lien), and then the debtors could obtain a Chapter 7 discharge of those same taxes. The Court did not, however, permit the debtors to take advantage of this loophole, holding that the three-year lookback period is a limitations period that is subject to equitable tolling.

The debtors argued that the three-year lookback period is not a period of limitations, but is instead a definition of nondischargeable taxes. The Supreme Court disagreed with this analysis. It defined the lookback period as a limitations period because it designates the time during which certain rights (*i.e.*, priority and nondischargeability) may be enforced. The Court applied hornbook law that limitations periods can be subject to equitable tolling. It held that equitable tolling applied to these debtors because the pending Chapter 13 case prevented the IRS from protecting its claim during that period. As in life outside of the bankruptcy court, the debtors had to pay their taxes.

The *Young* case teaches the importance of timing when tax claims are involved. This, of course, requires a prospective debtor to engage in brinkmanship: On the one hand, the debtor could wait out the three years in hopes of discharging the entire claim; on the other hand, the debtor will risk a last-minute imposition of a tax lien that could change an otherwise dischargeable tax penalty into a secured claim.

1 11 U.S.C. 523(a)(1)(A). This only applies to unsecured taxes.

Submissions for Fall/Winter 2002 Newsletter Welcomed

Do you have an interesting war story? A thorny legal issue which continues to vex you? A noteworthy case you would like to share with other bankruptcy practitioners in the region? The Newsletter wants to hear from you. The Newsletter is currently accepting submissions for the Fall/Winter issue. Articles may be e-mailed to mkimel@vmslaw.com. The deadline for submission of articles for the Fall/Winter issue is October 15, 2002.

From the Clerk

Flat Fee Approved for Ch. 13 Cases

On January 1, 2002 changes to LBR 2016-1 (Compensation of Professionals) introduced a flat fee concept to Chapter 13 cases. Under the changes, the debtor's attorney may enter into a flat fee agreement with the client, and once the flat fee is approved, which is included as a part of the order of confirmation, the fee will be paid to the attorney as a cost of administration by the trustee in the manner set out in the plan. Neither time records nor any other application for fees will be required. There is a mandatory form Flat Fee Agreement (LF 2016E) that is required to be submitted to the trustee. There is also provision for a Supplemental Application (LF 2016F) should the attorney find that work is required in the case that was not "ordinary, necessary and reasonably foreseeable." The expectation is that supplemental applications will be very rarely submitted and very closely scrutinized by the court. The Form Chapter 13 Plan has been modified to accommodate these changes.

Sub-division (f) of the rule is also new, and authorizes the trustee to hold back estimated attorney fees or attorney fees for which an application has been made as projected costs of administration, but pay them out only upon the entry of an order authorizing them.

Changes to Local Rule on Chapter 13 Approved

LBR 2083-1 also underwent some changes which became effective on January 1, 2002. Sub-paragraph (i), concerning objections to confirmation now includes language designed to indicate when an objection is "timely." It was made clear in the discussion that "timely" was not a deadline, and that an untimely objection received prior to confirmation would be considered by the court; the deadline is the entry of the order on confirmation. Sub-paragraph (k)(6) now requires that the debtor shall file an amended Plan Funding Analysis upon the making or proposing of a modification unless the modification is a stipulated modification between the trustee and debtor. Sub-paragraph (l)(6) was changed to clarify that adequate protection orders are required to be endorsed by the trustee. Sub-paragraph (p) was changed to formalize a practice that permits the trustee to issue income directives.

Requests for Comments to Changes to Local Rules

At the last meeting of the court's Standing Advisory Committee, the members unanimously recommended to the judges that LBR 5005-2 be abrogated and that a new local rule concerning dismissal of adversary proceedings involving the denial of a discharge be adopted. The court approved the recommendations and directed that they be published for public comment in accordance with 28 USC 2071(b). The rules and changes as proposed along with the committee notes are published in this issue of NOTES. Comments should be submitted to T.S. McGregor, Clerk, U.S. Bankruptcy Court, P O Box 2164, Spokane, Washington, 99210 by Monday, June 17, 2002.

DRAFT
Rule 5005-2
Filing Papers - Numbers of Copies
Abrogated

~~In addition to the original, each petition, schedule and statement of affairs shall be accompanied by the following number of copies:~~

~~Chapter 7.....3 copies~~
~~Chapter 7 (Stockbroker).....4 copies~~
~~Chapter 7 (Commodity Broker).....4 copies~~
~~Chapter 9.....7 copies~~
~~Chapter 11.....7 copies~~
~~Chapter 11 (Railroad Reorganization).....8 copies~~
~~Chapter 12.....4 copies~~
~~Chapter 13.....4 copies~~

Note: It is suggested that this rule be abrogated. Copies of these documents can now be delivered using the services of the Bankruptcy Noticing Center (BNC). Delivery can be made by this service either in paper format or several electronic formats. Elimination of the necessity to present multiple copies will save considerable expense to attorneys as well as any entity required to process them. Additionally, as electronic filing of petitions becomes a reality, copies will not be available, except as described above.

DRAFT
Rule 7041-1
Dismissal of Adversary Proceedings

A complaint objecting to the granting or for the revocation of a discharge shall not be voluntarily dismissed at any party's instance without notice and hearing to the trustee, United States Trustee and the Master Mailing List (MML) pursuant to LBR 2002-1.

References:

FRBP 7041	Dismissal of Adversary Proceedings
FRBP 4004	Grant or Denial of Discharge
FRBP 4005	Burden of Proof in Objecting to Discharge
FRBP 4006	Notice of No Discharge
FRBP 7001	Scope of Rules of Part VII
LBR 2001-1	Notice to Creditors and Interested Parties
11 USC 727	Discharge

From the Clerk cont'd

Note: FRBP 7041 requires that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct. This proposed local rule would provide specific direction that the MML must also be noticed in such a circumstance, and employs standard notice and hearing procedure.

Sale of Property of the Estate

11 USC 363(b)(1) states that the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. 11 USC 102(1) provides that "after notice and a hearing," or similar phrase, authorizes an act without an actual hearing if such notice is given properly, and no objection or a request for a hearing is timely requested. Sale of estate property is the subject of several rules; FRBP 2002(a)(2), (c), FRBP 6004, and LBR 6004-1. LBR 6004-1(c) states that "The court will not, as a matter of course, enter an order approving or confirming an unopposed sale. A party moving for an unopposed order approving or confirming a sale shall support the motion with an affidavit showing the necessity for the order." This requirement is most often based on a requirement of a title insurance company. A sale of estate property must satisfy a variety of requirements. Bankruptcy trustees who regularly sell property of the estate are familiar with the rules and requirements, however, Chapter 13 debtor's attorneys as well as attorneys for debtors in possession may be less familiar with the requirements and should carefully review all of the requirements for such a sale. 11 USC 363(f) permits sales free and clear of liens in only certain limited situations. If a party moves the court for an order authorizing or confirming a sale not only will the court require a statement as to why the order is required, but will also review the related documents to ensure compliance with the various rules and statutes.

Proofs of Claim

A proof of claim is deemed allowed as filed, and is prima facie evidence of its validity. A party in interest who wishes to object to the proof of claim must file a written objection in accordance with LBR 3007-1. It has been noted that a significant number of proofs of claim are filed incorrectly, such as where a priority is claimed that is not warranted. The court's advisory committee appointed a working group to suggest changes to the official proof of claim form to make the form itself more "user friendly" and designed to reduce, if not eliminate most such mistakes. At it's last meeting the committee unanimously recommended the use of the revised form, and the court has authorized its use finding that the alterations were appropriate and in keeping with FRBP 9009. This form, which is available on the court's website, will be included with each Chapter 12, 13 and asset 7 notice of meeting of creditors and also to the Notice to File Proofs of Claim in Chapter 7 asset cases. In addition to some repositioning of the items, the changes to the form adds a place where the creditor can indicate where payments should be sent if different from where notices should be sent, adds a box to indicate if the proof of claim is being filed on behalf of a creditor who has not timely filed a proof of claim, provides greater direction to the party completing the proof of claim as to when it is appropriate to claim priority, and includes a summary section.

Motion Required to Support Orders

Most case matters that require an order begin with notice and hearing, the concept defined in 11 USC 102(1), and the subject of LBR 2002-1. Typically, a notice is sent to interested parties, most usually the Master Mailing List, that advises them of what the party giving notice wants or intends to do; the notice describes how and when an objection may be made and that a hearing needs to be requested. The notice also requires to state what action may be taken or order granted without further notice if no objection is made. LBR 9013-1 (a) allows that in Adversary Proceedings this notice and hearing method of bringing motions forward may be used. Sub-division (c) of the above rule provides that all motions or applications for an order of the court, except motions in adversary proceedings or motions that may be considered ex parte, are to be made only after notice and hearing.

Every order of the court, ex parte or after notice and a hearing, must be sought by motion, and be supported by an affidavit or statement under penalty of perjury. Without the latter, the court would have no evidentiary basis upon which to support signing an order. General notice and hearing practice does not require that the motion be served upon interested parties, only the notice (although many attorneys serve both the notice and the motion on interested parties, or combine the notice with the motion).

In reviewing proposed orders based on notice and hearing, the court reviews the file to ensure that the notice given to the parties contained required information, was sent to the required parties, provided the required time for objections, and was served or sent in the appropriate manner, either as required by FRBP 2002 or FRBP 9014. The court also reviews the file to ensure that

Continued on Next Page

no objections are pending, and that the party seeking the order has filed a certificate of no pending objections in accordance with LBR 2002-1(e).

All proposed ex parte orders require a motion, and the motion must be supported by an affidavit or certificate under penalty of perjury.

2004 Examinations

FRBP 2004(a) provides that on motion of any party in interest, the court may order the examination of any entity. The other subdivisions of the rule discuss the scope of the examination, compelling attendance, time and place of the examination and mileage. LBR 2004-1 provides local requirements to this national rule. Orders are generally submitted on an ex parte basis. However, if the proposed order specifies a time and place for the examination then the moving party needs to certify in writing that the time and place has been coordinated with the person to be examined. Attendance of an entity for examination may be compelled by subpoena. Local rule permits the debtor to be compelled to appear for examination by order without the additional need for a subpoena.

The most frequent reason why such proposed orders are unable to be signed are that the certification of coordination is not provided, although the experience is that in almost all cases the coordination has occurred. It should be noted that the court will sign orders for examination without such a statement so long as the order does not indicate the time and place of examination.

Electronic Initiatives

Chief Judge Williams has begun a pilot program to sign orders electronically. Under this program, a proposed order is prepared using a word processing program, reviewed by chambers staff and then accessed and signed by Judge Williams electronically. Once an order is so signed, it is then docketed electronically and notice of the entry, if required by FRBP 9022, is served via the Bankruptcy Noticing Center. Judge Williams also uses the imaged documents in her review process of the various documents in the file. Thus in most cases where this electronic signing of orders is accomplished, the use of paper has been completely eliminated. Presently the orders that are the subject of this process are orders dismissing cases, confirming Chapter 13 plans, etc.

The Chapter 13 office is now filing electronically approximately75% of all documents they file with the court. That office also has entered into an EBN agreement with the bankruptcy noticing center so that they receive no paper documents, but instead receive the documents via e-mail.

Electronic Bankruptcy Noticing (EBN)

Most of the documents sent from the Clerk's office are sent using the Bankruptcy Noticing Center. These include the notice of the meeting of creditors, notice of or copies of orders of discharge of a debtor, dismissal or conversion of cases, orders of confirmation of Chapter 11 and 12 plans, as well as a broad range of orders of the court where service is required to be made on the contesting parties. FRBP 9036 permits service of such items by electronic means instead of by mail where requested in writing by the party entitled to receive the notice. The BNC is able to send notices in paper format, e-mail or by facsimile. The non paper formats are faster, and likely less expensive and more efficient for the recipient. It is recommended that parties who regularly receive bankruptcy notices generated by the court, consider asking to receive documents in other than paper format. The procedure for arranging to do this is quite simple, and detailed information about how to do it is available on the court's website of www.waeb.gov, under FORMS, then ELECTRONIC BANKRUPTCY NOTICING.

RACER Access Tips

Information contained in the court's data base is able to be accessed easily via RACER, the courts Rapid Access to Court Electronic Records. Case information items, including images, are the most often accessed items. Information concerning all cases filed since 1985 is available, and images are available for all pending cases between 1990 and 1996, and all cases from 1997 forward. The images accessible amount to some approximately three million pages of information. It is, however, helpful if not essential for a successful retrieval is an understanding how the data base may be searched. On the website, www.waeb.uscourts.gov, are hints that may be helpful. Assistance in performing searches may be obtained by calling the court at 509-353-2404, extension #200.

Orientation Seminar

A no-cost orientation seminar is being offered by the Clerk's office in Spokane on June 6, 2002, 9 a.m. - noon. The orientation seminar is designed to familiarize secretaries, administrative assistants and paralegals who are either new to bankruptcy or to the Eastern District of Washington, with services offered by the Clerk's office and with procedural requirements of the court. These seminars are considered to be very valuable and certainly enhance the effectiveness of an office in dealing with the Clerk's office and participation is encouraged. Register by calling Dianna Cunningham @ (509) 353-2404 ext 225.

From the Clerk cont'd

Filing Statistics 1st Quarter '02 vs. '01

The Eastern District of Washington experienced a decrease in overall filings for the 1st Quarter of 2002 as compared to the 1st Quarter of 2001. Overall, there were 2,622 total cases filed vs. 2705 or a decrease of 83 cases (see table below). This reduction was mostly related to a decrease in Chapter 13 filings. Within the entire district, Chapter 13s were down by 73 cases.

By region, the most notable differences were Richland and Yakima. Richland experienced a decrease in both Chapter 7s and Chapter 13s. Chapter 7s decreased by 33 cases and Chapter 13s dropped by 11 cases as compared to the same period last year. The Yakima Region had the most significant reduction in overall cases dropping by 62 cases. Chapter 13s decreased by 59 cases and Chapter 7s by four cases. Pullman had fewer overall cases filed as well, with Chapter 7s down by 17 cases and no Chapter 13s versus five cases filed in the 1st Quarter of 2001. As shown in the table, Moses Lake and Wenatchee were somewhat even with last year's 1st Quarter filings while the Spokane Region increased the most with 32 more cases filed, due mainly to an increase in Chapter 7 cases.

1st Quarter 2002 Filings

Showing Net Changes in Cases Filed vs. 1st Quarter 2001

Region	Chapter 7s		Chapter 11s		Chapter 12s		Chapter 13s		Total	
Spokane	791	24	13	7	0	n/c	242	1	1046	32
Richland	378	33	1	1	0	n/c	54	11	433	43
Yakima	437	4	1	1	0	n/c	273	59	711	62
Wenatchee	199	7	4	2	0	n/c	27	3	230	12
Moses Lake	147	n/c	2	2	0	n/c	17	2	166	n/c
Pullman	36	17	0	n/c	0	n/c	0	5	36	22
Total	**1988**	**23**	**21**	**13**	**0**	**n/c**	**613**	**73**	**2622**	**83**

= increase in cases filed = decrease in cases filed n/c = no change

Matrix Format

LBR 1007-2 sets out various requirements for the preparation and submission of the matrix, which forms the basis of the Master Mailing List (MML). The format designated in accordance with this rule is published in this issue of NOTES. Great attention to detail is of the utmost importance in preparing the matrix since if the addresses are incorrectly listed on the matrix those same errors will be found on the MML, and creditors may not receive the notices to which they are entitled.

LF 1007-2.FM1 (4/02)

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF WASHINGTON

MATRIX FORMAT GUIDELINES

AS DESIGNATED BY LOCAL RULE 1007-2

A mailing matrix containing the names and address of the debtors, their attorney and all creditors and equity security holders is required by local rule to accompany each petition for relief in bankruptcy. The format of the matrix is important so that the information will be compatible with the scanning equipment used by the court. A matrix that cannot be scanned will be returned to the presenting party for correction.

* Entries on the matrix are to be on blank 8 x 11 white bond or standard paper of good quality, with no letters or numbers touching one another.
* Font styles 12 pitch Courier, Prestige Elite and Letter Gothic are satisfactory. Script, Old English are not.
* Entries are to be positioned in a single centered column.
* Each entry is to consist of no more than four (4) single spaced lines with no more than 40 characters, including spaces, per line.
* The first and second entry are to be those of the debtor and joint debtor, if any, followed by the entry for the attorney for the debtor.
* The creditor entries need not be alphabetized.
* The first line is to be the name of the addressee. In the case of an individual the last name is to be used first, i.e., Doe, John A Jr or Jones, Dr Peter.
* The second and third lines are to be those of the street number, box number, apartment or suite number.
* The last line is to be that of the city, state and 5 or 9 digit ZIP code. The ZIP code should never be the only entry on a line. The standard two letter abbreviation without punctuation is to be used for the state, i.e., WA, ID, etc.
* Place three lines after the last line of the address and the

Continued on Next Page

Charging Orders

By Jean H. Campbell

A charging order is the exclusive method to satisfy a judgment from a judgment debtor's interest in a general or limited liability partnership[1] and it is the only method mentioned (although not specifically designated as the exclusive method) for executing on a partner's interest in a limited partnership[2] or a member's interest in a limited liability company.[3,4] It is obtained on application to a court of competent jurisdiction.[5] Provisions in the three acts, the Revised Uniform Partnership Act (RUPA), RCW 25.05 (1998) (general and limited liability partnerships), the Washington Uniform Limited Partnership Act, RCW Chapter 25.10 (1981) (limited partnerships), and the Washington Limited Liability Company Act, RCW 25.15 (1994) (limited liability companies), differ somewhat as discussed below. This article discusses the basic statutory provisions relevant to charging orders and includes sample forms of an Application and Order.

1. General: Effect of Charging Order, Procedure for Obtaining, and Foreclosure

A. Revised Uniform Partnership Act (RUPA) [6]

The RUPA was enacted in 1998. Its provisions on transfer of partnership interests follow the 1997 draft by the National Conference of Commissioners on Uniform State Laws.[7] Under the RUPA the charging order creates a lien on a partner's interest which may be foreclosed at any time,[8] and encumbers only the partner's transferable interest[9] but not actual property belonging to the partnership.[10] The purchaser at an execution sale has the rights of transferee.[11] The only property interest of the judgment debtor that can be transferred is the debtor's right to receive the partner's share of profits and losses and distributions to which the partner is entitled.[12] The transferor—the judgment debtor—retains the rights and duties of a partner other than the interest in profits and losses.[13] The transferee does not have the right to participate in management, obtain information concerning partnership transactions or to inspect or copy partnership books.[14] On dissolution and winding up the transferee has the right to receive the net amount distributable to the judgment debtor[15] but does not have the right to an accounting of partnership transactions before the date of the latest accounting agreed upon by all of the partners.[16]

A partner's interest is personal property.[17] The RUPA does not specify a method of foreclosure, but RCW 6.23.085 (charging orders obtained in conjunction with an examination of judgment debtor) states that the judge may "direct the sale of the partnership interest in the same manner as personal property is sold on execution."

Partners of a general or limited liability partnership must be given notice; the partnership is not bound before it has notice of a transfer.[18] If an examination of judgment debtor discloses an interest in a "partnership" the judge has discretion to enter an order charging the judgment debtor's partnership interest with payment of the judgment "upon such notice to other partners as the judge deems just, and to the extent permitted by Title 25 RCW".[19]

The creditor should examine a written partnership agreement since a restriction on transfer contained in the partnership agreement may cause the transfer to be ineffective.[20] The Order requiring the judgment debtor to attend and be examined pursuant to RCW Chapter 6.36 can require the debtor to produce partnership agreements, partnership tax returns (in case there is no written

From the Clerk cont'd

first line of the next creditor.

* List creditor once.
* Account Numbers (optional) should be placed after the company name or on the first address line.

Examples of proper entries are:

Jones, John A Jr
1234 Evergreen Dr # 3C
Anywhere WA 99999

Acme Toy Company
Attn: Mr. Red Ball
826 Fun Ave, 55 Toy Tower Bldg
Someplace ID 88888-8888

- Chapter 11 - A separate matrix should be prepared and clearly identified for equity security holders, need to be listed alphabetically.

Matrix Format Guidelines for Electronic Submission of Creditors

- Electronic files will be submitted in ASCII text format
- Content will be formatted as stated above with the following exceptions:

1) Entries are to be submitted in a text file named CREDITORS.TXT
2) Debtor, Joint Debtor and Debtor Attorney names should not be submitted

- If submitted on Diskette, the diskette shall:

1) be a 3.5 inch diskette
2) be labeled with debtor name, preparer name & preparer telephone number

Diskettes submitted to the court should be scanned prior to submission using an updated version of anti-virus software.

partnership agreement) and disclosure of the names, addresses and telephone numbers of all other partners which can be verified at the exam and used to give proper notice and tailor the provisions of the charging order to the circumstances.

Besides constituting a lien against a judgment debtor's "transferable interest in the partnership"[21] the charging order can require partnership distributions to be paid to a receiver if one has been appointed, otherwise to the clerk of the court, or can direct the sale of the partnership interest.[22] The judge can order a receiver of the judgment debtor's share of partnership distributions and may make various orders exercising powers belonging to debtor or as circumstances require.[23]

B. Limited Partnership Act [24]

Under the Limited Partnership Act a charging order gives the judgment creditor the rights of an assignee of the limited partnership interest to the extent of the unsatisfied amount of the judgment with interest.[25] An assignment does not entitle the assignee to become or to exercise any rights or powers as partner[26] but only to share in profits and losses and receive distributions to which the assignor was entitled.[27] The assignee, including the assignee of a general partner, may become a limited partner either to the extent provided in the partnership agreement or on approval of all other partners.[28] In contrast to partners in general or limited liability partnerships, unless otherwise provided in a limited partnership agreement a general or limited partner in a limited partnership "ceases to be a partner and to have the power to exercise any rights or powers of a partner upon assignment of all of his or her partnership interest."[29] The assignor (debtor) is not released from liability to the limited partnership for a false statement in the partnership certificate under RCW 25.10.140 or for contributions under RCW 25.10.280. "Unless otherwise provided in the partnership agreement [a limited] partnership interest is assignable in whole or in part."[30]

C. Limited Liability Company Act [31]

Under the Washington Limited Liability Company Act "the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest. The judgment creditor has only the rights of an assignee of the limited liability company interest." RCW 25.15.255. *But see* RCW 25.15.250(3)(a) which indicates that the charging order does not act immediately to put the judgment creditor in the position of an assignee, providing that the "pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the limited liability company interest of a member shall not be deemed to be an assignment of the member's limited liability company interest, but a foreclosure or execution sale or exercise of similar rights with respect to all of a member's limited liability company interest shall be deemed to be an assignment of the member's limited liability company interest to the transferee pursuant to such foreclosure or execution sale or exercise of similar rights." An assignee has the right to share in profits, losses, distributions, etc, to which the assignor (judgment creditor) was entitled, unless otherwise provided in the LLC Agreement.[32] Unless otherwise provided in the LLC Agreement, on assignment of all of a member's interest in the LLC, the "member ceases to be a member and to have the power to exercise any rights or powers of a member. An assignee has no right to participate in management absent approval of all members other than assignor-member or as provided in the LLC agreement.[33] Unless provided otherwise by the LLC Agreement, an assignee has no liability as a member solely by reason of the assignment.[34] The assignee may become a member on approval of all other members except the assignor-member or in compliance with the LLC Agreement,[35] at which time the assignee becomes subject to restrictions and liabilities of a member under the LLC Agreement and RCW Chapter 25.15.[36] The assignor (debtor) is not released from certain financial liabilities.[37] An interest in a Limited Liability Company is assignable except as provided in its agreement.[38]

FORM: APPLICATION FOR CHARGING ORDER

Charging Orders are not common so the following sample Application to charge a general partnership interest provides statutory information for the judge's information. It should be adapted, of course, to the particular circumstances of the case, and the law checked carefully before using it.

[Case Caption]

1. Application: The plaintiff judgment creditor, [Plaintiff Name] through its attorney of record, applies for an order charging the partnership interest of the defendant judgment debtor [Judgment Debtor Name] with payment of the judgment owed to the plaintiff [Plaintiff Name], and directing that all or any part of distributions or other amounts becoming due to the judgment debtor, other than earnings as defined in RCW 6.27.010, be paid to the Clerk of the [Court Name] pursuant to the judgment entered in said Court, for application to payment of the judgment in favor of [Plaintiff Name] in the same manner as proceeds from sale on execution.

The plaintiff requests the court for immediate entry of the Charging Order to create an immediate lien against the judgment debtor's partnership interest, and to give

Charging Orders *cont'd*

notice to the other partners by ordering them to show cause, if any they have, why the order should be vacated. It appears from evidence given at the Examination of Judgment Debtor that the only asset of the partnership is unimproved real property of which there are no current earnings. Imposing an immediate lien would constitute no hardship on the other partners and would protect the judgment creditor. The Court may order foreclosure at a future date after the other partners have had an opportunity to be heard.

2. Statutory Grounds. Where it appears from the testimony taken in special proceedings authorized by RCW Chapter 6.32 that the judgment debtor owns an interest in a partnership, pursuant to RCW 6.32.085 the judge who granted the Order ordering the judgment debtor to appear and be examined may, upon such notice to other partners as the judge deems just, enter such order to the extent permitted by Title 25 RCW. RCW 25.05.215 authorizes a court having jurisdiction to enter an order charging the partnership interest of the defendant judgment debtor with payment of the judgment owed to the plaintiff and directing payment to the Clerk of the Court to be applied to the judgment. Pursuant to RCW 25.05.215, a charging order constitutes a lien on the judgment debtor's transferable interest in the partnership, is the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership, the court may order a foreclosure of the interest subject to the charging order at any time, the purchaser at the foreclosure sale has the rights of a transferee, and the charging order does not deprive a partner of a right under exemption laws with respect to the interest in the partnership.

3. Factual Grounds. The defendant appeared at a Special Proceeding before this Court on November 23, 2000, and has an interest in [Partnership Name] which owns real property in [County Name], the other partners of whom are [Partners' Names].

[Date]

[Attorney's signature]

Use a supporting declaration from the attorney or plaintiff.

FORM: CHARGING ORDER

[Case Caption]

Based on the plaintiff's Application for Charging Order IT IS HEREBY ORDERED

1. The partnership interest of the defendant judgment debtor [Judgment Debtor Name] in [partnership name] is hereby charged with payment of the judgment owed to the plaintiff.

2. All or any part of distributions or other amounts becoming due to the judgment debtor, other than earnings as defined in RCW 6.27.010, shall be paid to the Clerk of the [Court Name] pursuant to the judgment entered in said Court, for application to payment of the judgment in the same manner as proceeds from sale on execution.

3. This Charging Order constitutes an immediate lien on defendant judgment debtor [Judgment Debtor Name]'s transferable interest in [Partnership Name].

4. This Charging Order shall remain in full force and effect unless, on [Date], at [Time] o'clock ___.m., or as soon thereafter as this matter may be heard, [Partners' Names] or [Judgment Debtor Name] appears in the courtroom of the Whitman County Superior Court and then and there shows cause why this order should be vacated.

5. On application of the plaintiff judgment creditor [Judgment Creditor Name], the court may enter such further orders as it deems just, including, but not limited to an order of foreclosure on the interest of [Judgment Debtor Name]in [Partnership Name], but shall not order foreclosure until after the hearing on the Order to Show Cause set in the preceding paragraph.

6. This Charging Order does not deprive the judgment debtor, [Judgment Debtor Name], of any right under exemption laws with respect to the interest in the partnership.

[Date]

[Judge's signature]

A separate Order to Show Cause should be prepared and docketed pursuant to local rules.

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1. RCW 25.05.215(5).
2. RCW 25.10.410.
3. RCW 25.15.255.
4 The Uniform Limited Liability Company Act (1996), National Conference of Commissioners on Uniform State Laws, final draft, provides that Charging Orders are the exclusive method for a judgment creditor to satisfy a judgment from the debtor's interest in a limited liability company.

Section 504 (e) — "This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company." The text may be found at http://www.law.upenn.edu/bll/ulc/fnact99/1990s/ullca96.htm

The Uniform Limited Partnership Act (2001), National Conference of Commissioners on Uniform State Laws, final draft, provides that Charging Orders are the exclusive method for a judgment creditor to satisfy a judgment from the debtor's interest in a limited partnership.

Charging Orders *cont'd*

Section 703(e) — "This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest." The text may be found at http://www.law.upenn.edu/bll/ulc/ulpa/final2001.htm

The main web site for the Uniform Acts is the Official Site of the National Conference of Commissioners on Uniform State Laws in association with the University of Pennsylvania Law School. There are links to all of the Uniform and Model Acts. http://www.law.upenn.edu/bll/ulc/ulc_final.htm

5. RCW 25.05.215(1).
6. R.C.W. Chapter 25.05
7 Uniform Partnership Act (1997) drafted by the National Conference Of Commissioners On Uniform State Laws. Url: http://www.law.upenn.edu/bll/ulc/upa/upa1200.htm
8. RCW 25.05.215(2) which is presumably subject to the time limits governing cessation of judgment liens in RCW 4.56.210.
9. A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, voluntarily or involuntarily. RCW 25.05.200.
10. RCW 25.05.200; RCW 25.05.205.
11. RCW 25.05.215(2).
12. RCW 25.05.205.
13. RCW 25.05.210.
14. RCW 25.05.210(1)(c).
15. RCW 25.05.210(2)(b).
16. RCW 25.05.210(3).
17. RCW 25.05.205.
18. RCW 25.05.210(5) states, AA transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.@ See RCW 25.05.010 for the definition of "notice" and "knowledge" in the RUPA.
19. RCW 6.32.085 Chapter 6.32 RCW does not distinguish between general, limited liability, or limited partnerships, nor does it specifically mention limited liability companies which are governed by Title 25 RCW APartnerships@.
20. RCW 25.05.210(c)(6)
21. RCW 25.05.215(2)
22. RCW 6.32.085.
23. RCW 25.05.215(1).
24. R.C.W. Chapter 25.10
25. RCW 25.10.410
26. RCW 25.10.400(1)(b)
27. RCW 25.10.400(1)(c)
28. RCW 25.15.420(1)
29. RCW 25.10.400(1)(d)
30. RCW 25.10.400
31. R.C.W. Chapter 25.15
32. RCW 25.15.250(2)(a)
33. RCW 25.15.250(1)
34. RCW 25.15.250(b)(4)
35. RCW 25.15.260
36 Including the obligation to make contributions RCW 25.15.195, and for the obligations of the assignor under Article V and VI of Chapter 25.15. RCW 25.15.(b)(2)
37. RCW 25.15.260 provides that the assignor is not released from financial liability under Articles V and VI of the Limited Liability Act.
38. RCW 25.15.250

Avoiding Unsecured Liens on a Debtor's Residence in Chapter 13

In recent months Yakima Chambers has received several ex parte motions in Chapter 13 cases seeking to avoid consensual liens on real estate using the notice and hearing motion process. These orders are being returned unsigned by the Court.

The typical situation is that the debtor has granted a second or third mortgage or deed of trust on their residence. A post petition review of the value of the debtor's residence reveals that there is no equity whatsoever available to the junior lien holder. A claim is deemed secured under 11 U.S.C. § 506(a) to the extent that there is collateral value to support the claim. Applying § 506(a), a debtor concludes that the junior lienholder's claim is wholly unsecured and thus the junior lienholder does not hold a allowed secured claim. Reference is then made to 11 U.S.C. § 506(d), which says that to the extent that a lien secures a claim that is not an allowed secured claim, the lien is void. This result is consistent with the holding in *In re Lam*, 211 B.R. 36 (9th Cir. BAP) and its interpretation of *Nobelman v. American Savings Bank*, 508 U.S.324, 113 S.Ct 2106, 124 L.Ed.3d 228 (1993). Based upon this analysis the debtor will file a motion on a notice and hearing basis that attempts to void the lien.

The problem is that while 11 U.S.C. § 506 provides the substantive law, one must look elsewhere to determine the appropriate procedural method for obtaining the requested relief. Federal Rule of Bankruptcy Procedure 7001 lists activities which are adversary proceedings and includes "a proceeding to determine the validity, priority or extent of a lien or tother interest in property

Case Notes

Award of Attorney Fees Under B.R. 7068

Federal Rule of Bankruptcy Procedure ("B.R.") 7068 regarding Offers of Judgment and its applicability for violations of the automatic stay under 11 U.S.C. §362(h) was at issue in two recent cases.

1) B.R. 7068 allows a party to offer that a judgment be taken against it. If the offer is not accepted and the final judgment on the merits is less favorable than the offer, the offering party is not liable for costs and attorney fees. If the final judgment is more favorable than the offer, the offering party is liable for attorney fees. Application of the rule arose in *Campion v. Associated Credit*, No. A00-00229-W13, which alleged a violation of the automatic stay and damages under 11 U.S.C. § 362(h). In actions under § 362(h), B.R. 7068 becomes a device by which a defendant may avoid liability for the statutory right of a successful plaintiff to recover attorney fees.

The defendant's Offer of Judgment under 11 U.S.C. § 362(h) was for a specific dollar amount which "represents full recovery of plaintiff's claim." The plaintiff accepted the offer and then filed a motion seeking attorney fees. The defendant had intended the offer to satisfy any claim for compensatory damages, punitive damages, costs and attorney fees. The plaintiff accepted the offer as satisfaction of compensatory and punitive damages.

The court reviewed case law which indicated that unless costs are specifically excluded from an Offer of Judgment under B.R. 7068, they are included. The question of attorney fees is determined by looking to the underlying statute and the language giving the plaintiff the right to recover any such fees. If, by the underlying statute, attorney fees are an element or component of costs, they are included in the offer unless specifically excluded. If attorney fees are awarded but distinguished from costs in the underlying statute, they are not included in any Offer of Judgment unless the offer specifically states that it includes them. Waiving statutory attorney fees by accepting an offer of settlement under B.R. 7068 must be clear and unambiguous. Any ambiguity in the offer to settle results in the attorney fees being excluded from the offer and a defendant can later file a motion requesting an award of attorney fees. Recission based upon a mistaken belief of the parties as to the meaning of the offer is not appropriate.

2) In *Odenthal v. McCraw*, No. A01-00043-W13, the plaintiff made an Offer of Judgment for $4,000 which included specific dollar amounts attributable to various damage claims with the balance for attorney fees and costs. At trial, the plaintiff was awarded compensatory damages of $276, much less than the amount of compensatory damages referenced in the Offer of Judgment. The plaintiff then requested an award of attorney fees and costs of approximately $6,700. The defendant argued that since its Offer of Judgment was for a greater amount of damages than the result at trial, its liability for attorney fees ended as of the date the offer was made. The plaintiff argued that since the total award by the court ($276 as damages and $6,700 for fees) exceeded the total amount offered by defendant, the trial result was more favorable than the Offer of Judgment and defendant remained liable for the fees.

Continued on Next Page

Avoiding Unsecured Liens *cont'd*

other than a proceeding under Rule 4003(d)." B.R. 7001(2). Thus, Section 506 creates the legal basis for voiding the lien and FRBP 7001 establishes the procedure. It should be noted that the *Lam* decision arose out of an adversary proceeding.

The reference in B.R. 7001(2) to B.R. 4003(d) does not eliminate the necessity for an adversary proceeding to avoid consensual liens on real estate. B.R. 4003(d) authorizes the use of a motion and notice under B.R. 9014 when seeking to avoid liens that impair exemptions pursuant to 11 U.S.C. § 522(f). Section 522(f) allowed the avoidance of judicial liens, that are not for alimony, maintenance or support, and non purchase money security interests in household goods, furnishings and other enumerated items. Consensual liens on real estate are not included within the scope of section 522(f). For the reasons set forth the only way to avoid consensual liens on real estate is through an adversary proceeding.

In many instances it is anticipated that the lien holder will not contest the adversary complaint. The plaintiff will then be entitled to seek a default judgment. In doing so they should comply with Judge Rossmeissl's policy on motions for default judgments. Judge Rossmeissl requires motions for default judgments to be supported by an affidavit setting forth substantial facts demonstrating the moving party's right to a judgment. This can be accomplished by a complaint verified by the debtor or a supporting affidavit of the debtor. An affidavit of counsel while sufficient to support an order of default will not be sufficient to support the judgment.

The court determined that any award of fees whether or not B.R. 7068 was at issue must first comply with the "reasonableness" requirement of 11 U.S.C. § 362(h). Only reasonable fees could be recovered for actions under that statute. Ordinarily, a case such as this would not require the amount of time and effort evidenced by a fee of $6,700. However, there were unusual circumstances in the case which rendered that amount reasonable.

The court then applied B.R. 7068 to actions arising under 11 U.S.C. § 362(h). That section of the Code expressly includes attorney fees as an element of damages. The Offer of Judgment was for $4,000, specifically including attorney fees. The total damages recovered after trial was $6,976, i.e., $276 plus $6,700 of attorney fees. The offer was less favorable than the result at trial and did not relieve the defendant of the duty to pay attorney fees incurred after the date of the offer. The court analogized to application of F.R.C.P. 68 to personal injury cases which contain many elements of damage, *i.e.*, lost wages, pain and suffering, out- of-pocket medical expenses, etc. In those cases, the total amount awarded at trial is compared to the total amount offered under F.R.C.P. 68 without regard to the dollar amount awarded or offered for each element of damage.

Disgorgement of Attorney Fees

This Chapter 11 was an emergency filing on May 4, 2000. The debtor's bankruptcy attorney had an office sharing arrangement with the attorney who referred the case and who was owed $22,000. Recognizing that questions might exist as to debtor's counsel disinterestness under 11 U.S.C. § 327(a), the debtor's counsel told both the client and the referring attorney that he would prepare the emergency filing but if questions arose as to the representation, the debtor would be sent to other counsel.

Schedules were filed on May 19, 2000. By the time of the § 341 meeting on June 2, 2000, it appeared as though the debtor and his major secured creditor had resolved their dispute, and an offer had been made to purchase most of the debtor's assets. It appeared as though the bankruptcy would shortly be dismissed. At the § 341 meeting, the facts giving rise to the concerns of disinterestness were provided to the U.S. Trustee. As is not uncommon, difficulty arose with the sale of assets and it was six months before the case was dismissed.

The debtor's counsel never filed an application to approve employment which would have included an explanation and disclosure of the pre-petition fees, the facts which might have raised questions under § 327(a) and the arrangements for payment of post-petition fees. The U.S. Trustee reminded the debtor's counsel on more than one occasion that an application needed to be filed even though it appeared the case would be dismissed in the near future. In response to the U.S. Trustee's motion that the counsel disgorge pre-petition fees and be precluded from collecting post-petition fees, debtor's counsel conceded that without such an application he was not entitled to any compensation for post-petition services and in fact had not requested compensation from the client and had no intention of doing so.

The issue in dispute was the duty to return pre-petition fees for the failure to disclose under B.R. 2014(a). Although the court commended the debtor's counsel for addressing the potential problem with the client and revealing the potential problem to the U.S. Trustee, the court held that "the rule is the rule" and the pre-petition fees had to be disgorged.

Editors Comment: A cautionary tale that cannot be told often enough. In a world where lines of demarcation are often blurred and grey, timely filing of an application to employ is a bright line rule. No timely application for employment is a most sure way of having later fee applications denied. While §§ 327, 328, 330, and 331 set forth the limitations and standards for awarding compensation to professional persons retained by a bankruptcy estate, and are the statutory bases of the Court's power to authorize employment of professional persons by a bankruptcy estate, § 329 provides the Court with the authority to review the nature of pre-petition transactions between a debtor and attorney.

Debtor's Objection to Washington Mutual Bank's Claim

Washington Mutual filed a Proof of Claim for arrearages on a mortgage totaling $5,766.25, of which $1,216.02 allegedly represented pre-petition legal fees and costs. The debtor objected to the amount of the bank's claim on the basis that the debtor had provided notice of the filing of the bankruptcy and that the portion of the claim that represented foreclosure fees were unnecessarily incurred as the Bank was on notice of the bankruptcy filing. At the hearing, the debtor produced evidence that he had sent notice to the party listed on the debtor's payment coupon book. That lender, at a different address, had filed a Proof of Claim in the debtor's prior bankruptcy specifying where notices were to be sent. Shortly before the current bankruptcy, however, the obligation had been purchased by Washington Mutual. Neither that name or address was in the payment coupon book. After observing that the title report of the property purportedly securing the lender's debt did not refer to Washington Mutual, the court held that it was not the duty of the debtor to determine if the mortgage had been sold on the secondary market or to trace the loan from purchaser to purchaser. Nor should the debtor provide notice of this bankruptcy to the address on a Proof of Claim in a prior case. The court found that the debtor had met her

burden of providing notice of the filing of the bankruptcy by sending notice to the name and address specified in her payment coupon book. Therefore, that portion of the claim that represented foreclosure fees, which the evidence indicated were actually incurred post-petition, was denied.

State Court Default Judgment Does Not Have Preclusive Effect

In re Williams; Paton v. Williams, CS-01-0213. In *Williams* the creditor had obtained a default judgment against the debtor for approximately $42,000.00. The state court complaint had alleged, among other things, breach of contract, fraud and negligent misrepresentation. The state court's findings of fact and conclusions of law contained only one reference to the alleged fraud claim in a sentence listing the claims alleged in the creditor's complaint. The state court findings did not specifically include any particular facts establishing the elements of fraud under Washington common law. When the debtor subsequently filed for bankruptcy protection, the creditor commenced a adversary proceeding to have his claim determined non-dischargeable. On a motion for summary judgment, the bankruptcy court granted judgment in favor of the creditor on the basis that the default judgment established a finding of fraud, and therefore was entitled to collateral estoppel for purposes of determining the dischargeability of the creditor's claim. On appeal to the Hon. William Fremming Nielsen, the district court reversed and remanded the matter back to the bankruptcy court for further proceedings.

The district court noted that the issue of whether state court judgment should have preclusive effect for dischargeability purposes should be determined by state law. After noting the elements necessary to establish collateral estoppel under Washington law, the Court framed the issue as a question of whether the fraud issue was actually and necessarily litigated and determined in the state court. The creditor asserted that, because the state court had awarded damages, the fraud allegations should be accepted as true.

The district court then reviewed bankruptcy caselaw interpreting whether Washington law provides collateral estoppel effect to default judgments. Reviewing the decisions in *In re Bigelow*, 271 B.R. 178 (B.A.P. 9th Cir. 2001), *In re Apfel-Wilson*, 165 B.R. 939 (Bankr. W.D. Wash. 1994), and *In re Boyovich*, 126 B.R. 348 (Bankr. W.D. Wash. 1991) the district court found that Washington courts have generally been reluctant to give default judgments preclusive effect. In *Miller* the judgment resulted from a trial at which the defendants had failed to appear. Despite the fact that the state court had made extensive findings of fact and conclusions of law, the bankruptcy court in *Miller* found the judgment lacked sufficiency to operate as collateral estoppel. 165 B.R. at 941. In *Boyovich* the state court had considered evidence beyond the initial pleadings and entered findings of fact and conclusions of law supporting the default judgment, but the bankruptcy court found that "it cannot seriously be argued that the issues were actually litigated." 216 B.R. at 350.

The district court then held that:

"[W]here a state court makes no express findings concerning a debtor's allegedly fraudulent actions, a default judgment cannot support the application of collateral estoppel in a bankruptcy proceeding, unless proof exists that the state court considered and specifically decided the issue of fraud."

Finding that the state court judgment failed to provide a sufficient factual basis for applying collateral estoppel because the default judgment failed to include any specific facts establishing that the debtor had committed fraud, as defined by Washington common law, and because the creditor had alleged various claims in the state court which would have otherwise supported the state court's judgment, the district court found that the default judgment in the state court case was not entitled to collateral estoppel effect in the bankruptcy court.

Abstention or Remand?

Empire Health Care Services v. Aetna U.S. Healthcare, Adv. No. 01-00027. The issue of whether removal of litigation from state to federal court anything leaves any pending litigation in the state court was answered in the negative in multiple adversary proceedings related to the Health Link bankruptcy. The plaintiffs in the adversary proceedings had originally filed suit in state court against non-debtor defendants asserting state law causes of action. Due in large part to the complex nature of the relationships among the plaintiffs, the defendants and the three debtors, the defendants removed said proceedings to the Bankruptcy Court. The plaintiffs then moved to remand the litigation back to the state court and for abstention.

The court found that both discretionary abstention under 28 U.S.C. § 1334(c)(1) and mandatory abstention under 28 U.S.C. § 1334(c)(2) were in applicable. When a state court suit has been commenced and then removed pursuant to 28 U.S.C. § 1452(a) to a federal court, no state court suit is then pending. The question of whether litigation removed to federal court should remain in federal court is a question not of abstention but of remand under 28 U.S.C. § 1452(b). *Security Farms v. International Bhd. of Teamsters*, 124 F.3d 999 (9th Cir. 1997).

BANKRUPTCY ANAGRAMS

by

Ian Ledlin

1. Combine and rearrange the letters and fill in the blanks with words commonly encountered in bankruptcy practice.

2. Move the numbered letters into the corresponding blanks below to form a phrase sometimes cited in bankruptcy decisions to describe the fate of debtors who become too aggressive with their pre-bankruptcy planning.

Lo Trace All

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Bed Rot

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17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34

Hon. James K. Logan, Dolese v. U.S., 605 F.2d 1146, 1145 (10th Cir. 1976); cited in In re Swift, 3 F.3d 929. 931 (5th Cir. 1993).

2001 - 2002 BANKRUPTCY BAR

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Mediation – It Works

The Bankruptcy Court for the Eastern District of Washington adopted a Mediation Rule on January 28, 2000, under General Order. Approximately 26 attorneys have agreed to act as mediators in bankruptcy cases.

Chief Judge Patricia Williams has been an enthusiastic supporter of mediation cases. She and United States District Judge Fred L. Van Sickle were instrumental in arranging for the training of mediators in this district. That training took place on April 30 and May 1, 2001, with a second session on October 4 and 5, 2001. The training was coordinated through the Straus Institute for Dispute Resolution at Pepperdine University. Two law professors from Pepperdine as well as our own Jim Craven taught at the training sessions. Over 30 participants attended the training sessions.

Mediation is a very effective tool in bankruptcy cases, particularly adversary proceedings. Recently, a large number of preference cases were resolved through mediation.

Mediation is a comparatively inexpensive and effective method to resolve disputes in bankruptcy cases. We you all to consider the use of mediation whenever possible.

Thomas T. Bassett
Mediation Subommittee.

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